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AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES
August 8-9, 2005

RECOMMENDATION

RESOLVED, That the American ~~Bar~~ Association encourages federal, state, territorial and local governments, consistent with **sound** correctional management, **law** enforcement and national security principles, to afford prison and jail inmates reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates.

REPORT

Telecommunications services are integral to human interaction in today's society. Accessing these services is especially important to people who are incarcerated, separated from family, friends and legal counsel by the fact of incarceration. Telephone access is particularly important for the significant percentage of the incarcerated population with limited literacy skills.¹

Leaders in the corrections profession have long recognized the importance of extending telephone privileges to people in their custody as a means of **fostering** and strengthening ties with their families and their communities? Telephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison? It **can** also contribute to safer prisons by reducing the number of disciplinary incidents! At the same time, we recognize that the desire to provide robust **communications** services to prisoners remains in tension with legitimate penological constraints of the correctional setting.⁵

Although recognizing the importance of providing expansive telephone privileges, many correctional systems engage in practices that make it difficult, if not impossible, for incarcerated people to use the telephone. First, many correctional facilities only permit prisoners to make

¹ Approximately 40% of the national prison population is functionally illiterate. The Center on Crime, Communities & Culture, *Education as Crime Prevention: Providing Education to Prisoners*, Research Brief: Occasional Paper Series 2 (Sept. 1997).

² See, e.g., the October 1996 Resolution on Excessive Phone Tariffs adopted by the American Correctional Association (ACA); ACA's Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (adopted 24 January 2001); and ACA's related standards (*Standard for Adult Correctional Institutions* (3rd ed.); *Standard for Adult Local Detention Facilities* (3rd ed.); *Standard for Adult Community & Residential Facilities* (4th ed.); *Standards for Adult Correctional Boot Camp Programs* (1st ed.); *Standards for Juvenile Community Residential Facilities* (3rd ed.); *Standards for Juvenile Detention Facilities* (3rd ed.); *Standards for Juvenile Correctional Boot Camp Programs* (1st ed.); *Standard for Juvenile Training Schools* (3rd ed.); *Standards for Small Juvenile Detention Facilities* (1st ed.); and *Small Jail Facilities* (1st ed.)). See also, the National Sheriffs' Association Resolution of 14 June 1995; and USDOJ-BOP, Program Statement 5264.06, *Telephone Regulations for Inmates* (Jan. 31, 2002).

³ See, e.g., U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available at <http://www.usdoj.gov/oig/special/9908/callsp2.htm> (last accessed 30 January 2005) ("telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison...") and State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004).

⁴ Bureau of Prisons Program Statement 5264.07, "Telephone Regulations for inmates: codified at 28 C.F.R. § 540.100 ("Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. . . . Contact with the public is a valuable tool in the overall correctional process."); State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004), available at <http://www.corrections.state.la.us/Whats%20New/PDFs/TimeInPrison.pdf>.

⁵ The "correctional setting" refers to facilities where people are detained or incarcerated, irrespective of their actual status as pretrial, civilly committed, adjudicated, or sentenced. Thus, the Recommendation encompasses jails and other detention facilities, prisons, training schools, residential facilities, and correctional facilities of all types.

collect calls. Second, charges for prisoner-initiated telephone calls **are** high as compared to rates offered in the residential and business markets and, in some cases, excessive! In some jurisdictions, escalating prices appear to be driven by "commissions" paid by service providers to correctional facilities for exclusive contracts, which hover in the 30% **to** 40% range, and can be as **high** as 65%, of all revenue generated. Third, many correctional systems require telephone service providers to block calls from prisoners to certain prohibited phone numbers for reasons **of** public safety and crime prevention. Some institutions, however, impose call-blocking requirements for inappropriate reasons, including a local carrier's failure to enter into a billing agreement with the provider, or because the number called is a cell phone **or** is a remote call forwarding number. In the case of calls placed to cell phones, many telephone service subscribers **are** opting **for** cellular service instead of the more conventional land-line connection. Remote **call** forwarding is a technology that has been employed by some telephone service providers to compete for business by re-directing calls to customers at costs lower than would otherwise apply. In an age of increasing mobility, it will often be possible to reconcile legitimate security concerns with new technologies. Fourth, many prison systems and jails place unreasonable limits on the **number** of calls a prisoner is allowed to make or receive, or the aggregate amount of time a prisoner *can* spend on the telephone during a prescribed period? Finally, correctional institutions monitor and record inmate telephone calls routinely, but policies that permit monitoring client-attorney communications in the correctional setting or **that** unreasonably limit the availability of permissible unmonitored calls threaten fundamental rights regarding the effective assistance of counsel and access to the courts! Such policies are presumptively unconstitutional?

⁶ "[C]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are in excess of the actual cost of the call, and which could discourage or hinder family or community contacts." C.A. 1996 October 1996 Resolution on Excessive Phone Tariffs

⁷ In Texas prisons, inmate access to phone is quite limited. "Offenders who demonstrate good behavior can earn one 5-minute collect phone call every 90 days. . . ." Texas Department of Criminal Justice, Correctional Institutions Divisions, Frequently Asked Questions (<http://www.tdcj.state.tx.us/faq/faq-cid.htm#telephone>) (last accessed 16 January 2005).

By comparison, the Federal Bureau of Prisons (BOP) policy is generous. BOP Program Statement 5264.07 entitled, "Telephone Regulations for Inmates," which was codified at 28 C.F.R. § 540.100 *et seq.*, states that inmates **are** generally permitted privileges to contact up to a maximum of 30 individuals on an approved telephone list **for** up to 300 minutes pw month. P.S. 5264.07, §§ 10.a. (30 numbers), and 10.d.(1)(300 minutes). Although advocating that then-unlimited telephone access be restricted, the Office of the Inspector General found the 300-minute limitation to be "arbitrary," *Criminal Calls*, *supra* n. 3, Ch. VIII, § I. ¶ 1. (Aug. 1999), *available at*: <http://www.usdoj.gov/oig/special/9908/callsp7.htm#Punishments> (last accessed 30 January 2005). Indeed, **for** several consecutive years, the BOP has permitted inmates 400 minutes of telephone access during the months of November and December

⁸ The U.S. Attorney General's directive on 31 October 2001 authorizing correctional officials to monitor inmate-client/attorney communications in cell AG Order No. 2529-2001, 46 FR 55062. That directive was subsequently codified at 28 C.F.R. 501.3 (31 Oct. 2001).

⁹ See *id.* n. 14.

As the billed parties for inmate collect calls, the family and friends of incarcerated people regularly shoulder the **high** cost of prison telephone services. A call recipient is often confronted with a choice of paying exorbitant rates for a collect call from a jail or prison, or refusing it. Many families cannot afford the inflated rates.” One damaging result is that children are frequently unable to maintain contact with parents who are confined. Arbitrarily blocked calls only exacerbate the situation.

Individually and collectively, the foregoing practices also make it more difficult for incarcerated people to communicate with their lawyers. Telephone **calls** are an efficient means for attorneys to communicate with incarcerated clients, particularly when literacy or English-speaking skills are a factor. It is regularly less burdensome for an attorney to **speak** with a client over the telephone than to travel **to** the facility and conduct a meeting or personal interview. The high cost of prisoner phone calls makes it difficult or impossible for many prisoners’ lawyers to accept their calls. The vast majority of incarcerated people are represented **by** public defenders or court-appointed attorneys who operate with extremely limited budgets.“ **This** has serious implications given the constitutional protections surrounding a prisoner’s ability to communicate with counsel.” When attorneys are able to accept prisoner calls, the high cost **of** the calls cuts **into** the attorneys’ budgets, making it difficult for them to afford other items necessary to their clients’ defense.

Correctional administrators struggle with the perennial problem of stretching limited financial resources to meet institutional needs. The lure of telecommunications contracts that promise a return of **as** much as **65%** of all revenue **can** appear irresistible in the absence of alternative sources of revenue. But entering into such an arrangement creates **an** ethical quagmire of **both** real and perceived conflicts which compromise both the professional integrity of correctional officials and the public’s perception. Given the penological and societal benefits that occur when incarcerated people are able to maintain contact with the outside world, **the** monetary advantages are not worth the human costs.¹³

¹⁰ See, e.g., *In the Matter of: Implementation of 1 Telephone Reclassification and Compensation 1* to *2*, *Record of the Ad Hoc Coalition for the Right to Communicate Regarding* *Petition for Rule Making in the Alternative, 1 to 14* (in *Prison Rule Making* *accompanying declarations*, FCC Docket No. 96-128 (filed 10 March 2004))

¹¹ According to the U.S. Department of Justice, 82% of felony defendants in 75 largest counties in the country in 1996, and 66% of felony defendants in federal courts in 1993 were represented by court-appointed attorneys. Department of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases*, Nov. 2000. Both public defenders and other court-appointed counsel are paid by the same governments that fund the correctional system from which they are paid. Given the current fiscal crisis in governments at all levels, exorbitant rates for inmate-generated telephone calls seem particularly pernicious.

¹² *Shelton*, 535 U.S. 654 (2002) and *Wainwright*, 372 U.S. 335 (1963) (recognizing institutional right to counsel in criminal cases) with *Lewis v. Casey*, 518 U.S. 343 (1996) and *Bounds v. Smith*, 430 U.S. 817 (1977) (prisoners’ right of access to the courts with regard to certain civil and criminal matters).

¹³ The Nebraska Department of Correctional Services does not accept commissions on inmate telephone calls. Instead, rates are set by the Nebraska Public Service Commission. Nebraska Department of Correctional Services, *Asked Questions*, available at: <http://www.corrections.state.ne.us/frequently-asked-questions.html> (last accessed 30 January 2005).

Although some courts have recognized the constitutional problems inherent in correctional policies that make it impossible for prisoners to contact lawyers and others,¹⁴ neither the courts¹⁵ nor regulatory agencies¹⁶ have yet required correctional authorities to abandon sole-source contracts and open the prison environment to competition that could result in a broader range of calling options at the lowest possible rates.

The resolution encourages federal, state, territorial and local governments to ensure that incarcerated people are afforded a reasonable opportunity to maintain telephonic communication with family and friends in the free community, consistent with the imperatives of correctional management, law enforcement and national security. While the resolution does not go further to specify particular measures correctional authorities must take to ensure the "reasonable

¹⁴ Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts. *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995) ("Restrictions on a detainee's telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee's access to a telephone may also violate the Fourteenth Amendment."); *Tuckerv. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991) (denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir. 1989) (holding that inmates' challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff'd & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977) (granting a permanent injunction precluding the monitoring and denial of inmates' telephone calls to their attorneys). See also Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002) (Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers). They have accordingly held that, when prisons' collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these rights. See, e.g., *Lynch v. Leis*, Docket No. C-1-00-274 (S.D. Ohio Feb. 19, 2002) (holding that where public defender's office and many private attorneys refused most collect calls, a prison's collect call-only policy was unconstitutional) (unpublished decision on file with the Brennan Center); *In re Ron Crimes*, 208 Cal. App. 3d 1175, 1178 (1989) (holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender's office, other county departments, and some private attorneys did not accept collect calls).

¹⁵ See, e.g., *Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. 2000). Illinois granted one phone company the exclusive right to provide telephone services to inmates in return for 50 percent of the revenues generated. Prisoners and members of their families challenged the practice as a violation of their free speech rights, as a discriminatory denial of equal protection of the laws, and as a violation of federal anti-trust laws. In the *Arsberry* case, the United States Court of Appeals for the Seventh Circuit concluded that the practice did not violate the constitution or any federal law. See, also, *Daleure v. Kentucky*, 119 F. Supp. 2d 683 (W.D. Kentucky 2000) (The court found defendants' actions did not violate the Constitution); *Miranda v. Michigan*, 141 F. Supp. 2d 747 (E.D. Mich. 2001) (Plaintiff's Federal Telecommunications Act claims fell within the primary jurisdiction of the Federal Communications Commission and were dismissed).

¹⁶ See, e.g., *In the Matter of Wright-Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket 96-128 (Federal Communications Commission) (decision pending); *In re: Petition of Outside Connection, Inc.*, DA 03-874 (Federal Communications Commission); *Voluntary Remand of Inmate Telephone Services Issues*, CC Docket No. 96-128 (Federal Communications Commission); and North Carolina Utilities Commission, Docket No. P-100, Sub 84; Docket No. P-55, Sub 1005; and Docket No. P-100, Sub 126. These cases were matters in which prisoner advocates filed briefs, appeared at oral argument, and engaged in discussions with commission personnel, all without success.

opportunity” that is urged, there are a number of basic steps that have been identified as deserving of serious consideration. **First**, correctional authorities should encourage service providers to offer a broad range of calling options, consistent with sound correctional practices. Toll-free calling, debit calling, and collect calling are options that offer different advantages at varying costs. To the extent that existing technology does not permit full access to toll-free numbers for security reasons, correctional authorities should work proactively with telephone service providers to develop and refine technology that extends security features to toll-free calls. Although correctional authorities must be mindful of security concerns when determining what calling options to offer, some telecommunications experts and numerous correctional systems have found that alternatives to collect call-only policies – such as the debit-calling option presently in place in a significant number of facilities – can satisfy legitimate security concerns.¹⁷

Second, telephone services in the correctional setting should be offered at the lowest possible rates. A wide range of calling options and fair competition in the marketplace will help control excessive costs. Non-exclusive contracts, contracts with multiple vendors, the provision of debit cards through multiple vendors, and unrestricted vendor access to correctional telephone networks are all measures that promote fair competition which will lead to reasonably priced telephone services for prisoners and their families. Greater oversight of the terms and conditions – particularly the site commissions – of service contracts will enable service providers to lower their cost of service and pass those savings on to consumers.

Third, telephone service contracts should expressly forbid call-blocking for any reason other than legitimate law enforcement and national security concerns, requests initiated by the customer, or failure to pay legitimately invoiced charges.

Finally, if correctional authorities conclude that limits must be placed on the number of calls a prisoner makes, or on the aggregate amount of telephone time allotted a prisoner in a given period, those limits should be as flexible and generous as possible in light of the many benefits of maintaining ties between incarcerated people, their families, and their communities.

Respectfully submitted,

Catherine Anderson
Chair, Criminal Justice Section
August 2005

¹⁷ See *In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, FCC Docket 96-128, Affidavit of Douglas Dawson. The federal Bureau of Prisons permits prisoners to place calls using debit cards, demonstrating that collect call-only policies are not necessary to maintain prison security. See U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Institution Controllers AU Trust Fund Supervisors, from Michael A. Atwood, Chief, Trust Fund Branch, Trust Fund Message Number 18-02 (Feb. 8, 2002) at 2.

GENERAL INFORMATION FORM

1. **Summary of Recommendation.** encourages federal, state, territorial and local governments, consistent with the constraints of sound correctional management, law enforcement and national security principles, to afford prison and jail inmates every reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in **the** correctional setting with an appropriate range of options at the lowest possible rates.

The proposed resolution encourages federal, state, territorial and local governments to afford incarcerated people **every** reasonable opportunity to maintain telephonic communication with the *free* community consistent with **the** constraints of sound correctional management principles, and **to** offer the broadest possible range of telephone services in the correctional setting at the lowest possible rates.

2. **Approved by Submitting Entity.**

This recommendation was approved by the Criminal Justice Section Council at its May 14-15, 2005 meeting.

3. **Similar Recommendations Submitted Previously.**

This recommendation has not previously been submitted to **the** House of Delegates **or** the Board of Governors.

4. **Relevant Existing ABA Policies and Affect on These Policies.** None.

5. **Urgency Requiring Action at this Meeting,** The proposed resolution has been the subject of deliberation and discussion among a broad range of people with diverse interests. Drafts of **the** proposed resolution **have** been widely circulated, and based upon comments received, the proposed resolution has been repeatedly revised and refined. **As** it is presently worded, the proposed resolution has been approved by **the** Corrections and Sentencing Committee of the Criminal Justice Section and is ready for consideration by the Board of Governors and the House of Delegates.

6. **Status of Congressional Legislation (If applicable).** None.

7. **Cost to the Association.** None.

8. **Disclosure of Interest (If Applicable).**

No known conflict of interest **exists**.

9. Referrals.

Concurrently **with** submission of this **report** to **the ABA** Policy Administration Office for calendaring on **the** August 2005 **House** of Delegates agenda, it is being circulated **to** the following:

Sections, Divisions and Forums:

All Sections and Divisions

10. Contact Person (Prior to 2005 Annual Meeting).

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New York State Earns Top Dollar From Collect Calls by Its Inmates
 By JOHN SULLIVAN
New York Times (1857-Current file): Nov 30, 1999; ProQuest Historical Newspapers The New York Times (1851 - 2003)
 pg. A1

New York State Earns Top Dollar From Collect Calls by Its Inmates

By JOHN SULLIVAN

Ruth Smith said a telephone call from prison had been a way for her cousin to speak to his dying mother. For Tulen Rivera, the calls from prison are an opportunity for her three boys to speak with their father. For Ruby Jackson, speaking by phone with her imprisoned husband is a chance to talk without having to spend eight hours on an overnight bus.

But for New York State, like most other states, telephone calls from prison are something else. They are a way to make money.

Under current state policy, families and others whom inmates are permitted to call are charged a high rate for calls from prisons — at least a third more than rates available to the general public — and most of the money is kept by the state.

Last year, for instance, New York made \$21 million from collect phone calls placed by inmates, one of the highest totals in the country. The money is paid under a contract with MCI, which provides the phone service to New York state prisons. In part, MCI won the contract by agreeing to pay the state a larger share of its earnings than its competitors. Under the current contract, MCI pays 60 percent of its revenue to the state.

"Inmates do not have a right to make telephone calls," said James B. Plateau, spokesman for the New York State Department of Correctional Services. "If they are going to make phone calls, we believe it is smart to charge a commission and use the funds to offset the costs that taxpayers pay for inmate pro-

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Albany Gets Top Dollar on Inmates' Calls

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grams."

Inmates and their families, while acknowledging that there is an understandable limit to public sympathy for their plight, nonetheless say this arrangement is often painfully unfair. In many cases, they have no option but to pay the phone bills or lose contact with their husbands, wives, fathers or mothers, for inmates can call only collect from prison, and their families are often too far away to visit.

Similar arrangements between state prison systems and phone companies have existed for years across the country — Ohio and Florida each made roughly \$14 million annually in recent years — and a small handful of lawsuits, including one in New York, have been filed charging that the practice is exploitive.

While some states simply tack on surcharges to inmate calls, New York instead requires that inmates in state prisons pay the operator-assisted dialing rate, which is about \$3.03 for a 10-minute phone call, according to MCI. A person using an 800 number to dial collect would pay \$3.83 for the same call. Rates would be much lower for a direct call. Inmates in federal prisons dial direct, using debit cards, but New York officials say this would be impractical for their system.

Tulen Rivera, then, lives out — and pays out — the consequences of the state's determination to make money on inmate phone calls. Ms. Rivera says she usually drives to visit her husband, who is serving his sentence near Buffalo. But she says it is hard to make the trip, and she cannot go as often as she would like. As a result, she spends what she estimates is more than \$700 a month to have her children speak with their father.

"I have to give up a lot to pay the phone bill," Ms. Rivera said. "But I think it is important that the children have contact with their father."

Inmate groups argue that New York and other states should award the telephone contract to the companies that can provide the service at the lowest cost, rather than profiting on fees paid by inmates' families.

"Most of these people are poor," said Robert Gangl, executive director of the Correctional Association of New York, a nonprofit group that monitors prison conditions. "They don't have the political leverage to fight it."

But corrections departments say it is not unreasonable to expect inmates' families to bear some of the cost of running a prison system. Part of the reason for the higher cost is the extra security features that corrections departments require to prevent prisoners from using the phones to commit fraud or other crimes.

As Mr. Plateau points out, inmates are in prison as punishment.

"The taxpayer provides a bed and three square meals a day, with educational and vocational programs that will help the inmates be successful on their release," he said. "It is certainly not unreasonable for the telephone to help pay for the costs."

Greg Blankenship, a spokesman for MCI Worldcom, said the company did not set the phone policy, which is mandated by the state. The company, he said, had simply made the most attractive bid for the state's plan.

In a number of states across the country, inmates' families have begun to protest the amount they are charged for accepting the collect calls.

"There is not a state that we have encountered that does not have this problem," said Kay D. Perry, chairwoman of Citizens United for the Rehabilitation of Errants, a national prisoners' advocacy group. She said that the states should not "be in the business of making money" from the

inmates' calls.

In New York and Illinois, inmates' families have filed lawsuits claiming, among other things, that the charges are an unfair tax on a small group.

"The families have done nothing wrong, so why are they being taxed?" said William T. Martin, the lawyer representing the families in New York.

Ms. Smith, whose cousin is serving a 25-year sentence on a drug conviction, estimated that she spent \$100 a month to speak with him. When his mother was dying, it was particularly important for him to have contact with his family, she said. Ms. Smith said she is now one of the few family members her cousin has left in New York, and as one of the directors of a substance abuse center, knows "the importance of having someone to talk to."

"I disagree that people can just say no to a phone call from a family member," she said.

Faye Ploper, who works with the New Jersey chapter of an inmate advocacy group, said she recently received a letter from a woman whose son is undergoing chemotherapy in prison. The woman wrote she could not afford the \$200 monthly phone bills to speak with her son, Ms. Ploper said.

Ms. Ploper, who said her son is serving a prison sentence in New



Ruth Smith, whose cousin is serving a 25-year sentence on a drug conviction, estimated that she spent \$100 a month to speak with him. Inmates' advocates are protesting New York's profit-based prison phone charges.

Jersey for murder, said that the state seems to be trying to make it more difficult for families to contact inmates in person and by phone. "I know he has done wrong, and he needs to pay his debt to society," Ms. Ploper said. But she said, "The state is punishing the families, too."

Mr. Plateau said that New York State uses the money to pay for services for inmates. Most of the money is used to pay for AIDS medication and treatment, and a smaller amount pays for visitors' services, including buses and waiting rooms, he said.

But inmate advocates say that a vast majority of the money is spent on health care for prisoners, something that the state is required to provide.

"That is the government's responsibility, and it should not impose an unfair burden on inmates' friends and families to pay part of that bill," Mr. Gangl said.

Telephone companies say that much of the cost faced by inmates is due to security. While callers can typically use cheaper methods, including dialing direct or automated collect calling numbers, inmates have to use operator-assisted calling because of required security features.

"There are a lot of options that consumers have that are not available for the prison market because of

the security provisions," said Gordon Diamond, a spokesman for the AT&T Corporation.

New York, like other states, requires special security features for inmates' calls. Prisoners are allowed to call only approved numbers, and can be monitored and taped while making calls. The telephones also automatically inform the person answering the phone that the call is from an inmate in a state prison. The steps are intended to prevent inmates from harassing or defrauding people outside the prison.

But the actual cost of security systems are typically much lower than the money made by the state. Mr. Plateau said New York spent \$283,000 last year to maintain the system, including the security features.

Gerald Norlander, deputy director of the Public Utility Law Project, a consumer group, said the reason costs have risen is not the security considerations or phone company profits, but the commissions demanded by state governments.

"The prison system seeks to generate the most revenue possible from the phone system," he said.

A study released last year by the Florida State Legislature tracked the state's revenues from prison phone calls from 1980 to 1986 and found that the earnings jumped from less than \$2 million in 1980 to more

than \$14 million in 1987.

John Mavros, executive director of the Joint Connection — an organization that works with the families of inmates in New Jersey — said the increase reflected a simultaneous growth in telephone competition and prison population. Mr. Mavros said the newly competitive telephone companies saw the country's skyrocketing numbers of inmates as an untapped market, and prison administrators saw it as a chance to support their budgets.

"The cost of communications has gotten less expensive," he said. "But the cost of making a phone call from prison has risen."

The Florida study, which is frequently cited by inmate advocates, also concluded that inmates with strong ties to their families were less likely to return to prison. State Representative Allen Trovillion, whose legislative committee issued the report, said that Florida inmates' contacts with family members came primarily over the phone, with 68 percent of prisoners speaking with their families at least once a week.

Mr. Trovillion has argued that rather than seeking the most money from the calls, states should encourage family contact "to see what we can do to get these people from coming back into the system."



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Wives See Wrong Numbers on Phone Bills for Inmates

BY CATRIONA STUART - Special to the Sun

January 21, 2005

URL: <http://www.nysun.com/article/8033>

As the dozen women in her support group nodded their heads in silent agreement, Wanda Best-Deveaux, 49, spoke of how often she and her fellow spouses of New York inmates complained about the high cost of their special telephone bills for prison calls.

With their husbands incarcerated along with 64,000 other people in New York, many of the women in her group were living as single mothers and relying heavily on infrequent phone calls to meet the challenges of keeping their fractured families together. But they all struggled to keep up with the burdensome telephone bills.

"I felt taken advantage of," Mrs. Best-Deveaux said. Her weekly half-hour phone calls with her husband, throughout his 25-year incarceration, left her with \$150 monthly phone bills. "But without the phone calls, the distance between us seemed to grow."

Since officials at the state Department of Corrections chose, in the mid-1980s, to switch to a single-carrier telephone contract for the Inmate Call Home Program, it has eliminated the multiple contracts and confusing rate structure that plagued the previous arrangement. Families of New York inmates said, however, that it has also taken a toll on their fragile relationships. They said that under the exclusive contract now held by MCI, absent competition, the long-distance carrier can charge exorbitant fees, which fall heavily on those who are least able to foot the bill.

For security reasons, many prisons across the country, including those in New York, allow inmates to call only a set of pre-approved telephone numbers, which the prisoner may update monthly. Those calls

can only be made collect, which transfers the entire cost to the recipients. Under the single-carrier contract in use in New York, advocacy groups said, rates for inmate-generated calls run as much as 630% higher than for regular long-distance calls.

In New York, MCI charges prison-call recipients a \$3 connection fee and 16 cents per minute thereafter. At those rates, the average inmate's collect call, which lasts 19 minutes, will cost more than \$6, an umbrella group called the New York Campaign for Telephone Justice estimated.

The other bidder for the state prison telephone contract, AT&T, declined to comment on its proposed rates for the 3,335 collect-call-only telephones in the state's prisons. AT&T lost its 1996 bid for the contract to MCI.

State corrections authorities tallied a monthly average of 500,000 completed calls and 9.5 million minutes of phone time, at the current MCI rates. According to figures from the Department of Corrections, an additional 2 million inmate-generated calls per month are not completed - and some of those calls can still be subject to the connection fee.

The additional cost is necessary to pay for extra security measures, a department spokesman, James Flateau, said. According to a spokeswoman for MCI, Natasha Haubold, the higher rates are charged to offset the costs of additional staff to monitor and record calls, multilingual operators, and technology to block inmates from contacting victims or witnesses of their crimes.

The inmates are each given a PIN through which they can get through to the pre-approved family members or friends on their lists. In a time-consuming process, the numbers must be individually screened and MCI must place a blocking mechanism on them to prevent call forwarding, which could allow inmates to circumvent the security features.

MCI is the nation's largest carrier of inmate phone programs and the second largest long-distance provider. Ms. Haubold said the costs of an inmate-initiated call and a normal call cannot fairly be compared. But the high cost of the inmate calls is unwarranted, the statewide coordinator for the New York Campaign for Telephone Justice, Annette Dickerson, said. Federal prison systems impose many of the same security measures on their inmate-generated calls, but charge recipients of inmates' calls as little as 7 cents per minute. The cost of New York's prison calls could be reduced if the state would forgo the millions it receives in a profit-sharing arrangement written into its contract with MCI, according to Ms. Dickerson.

Under the current arrangement, MCI gives New York 57.5% of the gross profit from the Inmate Call Home Program, putting about \$20 million a year in state coffers. Though the industry standard is to provide compensation for housing pay phones, the question, Mr. Flateau said, is really a matter of balancing inmate privileges and private tax dollars. During the first five years of the Inmate Call Home Program contract with MCI that began in 1996, the State had brought in \$109.1 million, according to a 2002 audit of the program by the office of the state comptroller. The majority of the money, the audit concluded, was spent on inmate health-care programs.

In 2001, for example, more than 56 percent of the program's revenue went toward the purchase of AIDS pharmaceuticals for inmates. And in 2003, according to Ms. Dickerson, \$1X million from the phone-call revenues was spent on inmate medical care. She said, however, that since health care for inmates is constitutionally guaranteed, the state's receipts from the program amount to an "unlegislated tax to pay for something that is supposed to be shared as a burden by the entire state."

"Most people, if they don't have anyone in prison, they don't care if an inmate can't talk to their family," Ms. Best-Deveaux said in her honey-dipped Southern drawl. "But they are not aware that this is a public-safety issue." Her reason for saying that: Corrections officials and prisoner advocates agree that studies have proven that recidivism declines when prisoners are able to maintain close family connections.

So far, according to the executive director of a nonprofit prison-affairs group, Robert Gangi, the New York prison system has largely dismissed such concerns, but he said inmate family issues should be a matter for public concern.

"People who are being, in effect, treated unjustly by this are a vulnerable group of people without a lot of political power," Mr. Gangi, of the Correctional Association of New York, said.

Complaints from around the country have already sparked other states to revisit their policies. California, North Carolina, Nebraska, Indiana, and Missouri have reduced or eliminated the state commissions for inmate phone service.

In addition, the Federal Communications Commission has begun to investigate the issue, in response to complaints. "There is a process going on that is asking a lot of questions about the best practices," an agency spokesman, Mark Wakefield, said. "But it's still very much a work in progress."

January 21, 2005 Edition > Section: New York > Printer-Friendly Version

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Implementation of Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996

Martha Wright, Dorothy Wade, Annette Wade,
Ethel Peoples, Mattie Lucas, Laurie Nelson,
Winston Bliss, Sheila Taylor, Gaffney &
Schember, M. Elizabeth Kent, Katharine Goray,
Ulandis Forte, Charles Wade, Earl Peoples,
Darrell Nelson, Melvin Taylor, Jackie Lucas,
Pater Bliss, David Hernandez, Lisa Hernandez
and Vendella F. Oura

CC Docket 96-128

DECLARATION OF DR. CREASIE FINNEY HAIRSTON

Dr. Creasie Finney Hairston declares that the following is true under the penalty
of perjury:

I. INTRODUCTION

1. My name is Dr. Creasie Finney Hairston and I am Dean of the Jane Addams
College of Social Work (the "College"), University of Illinois at Chicago, located at 1040
West Harrison Street, Room 4018 Chicago, Illinois 60607-7134. I am also a professor
there. Jane Addams College of Social Work builds on the legacy of its namesake, the
Illinois-born social reformer, Nobel Peace Prize winner, and pioneer of American social
work, who in the late 1800's promoted the development of programs to enhance health,
literacy, workplace safety, education, justice for children, outreach to oppressed
immigrant groups, and social investigations. The College carries out the mission of Jane

Addams, adapting it to contemporary needs and the realities of today's urban settings. Its commitment to social, racial, and economic justice is reflected in the racial and cultural diversity of the faculty, staff, and student body; the curriculum of the degree programs; community service projects; and research and evaluation projects and initiatives.

2. Jane Addams College of Social Work's master's and bachelor's programs are fully accredited by the Council on Social Work Education. Its Master of Social Work program is one of the ten largest programs in the United States and the largest in the Big Ten region. Our graduates are prepared to work as practitioners, caseworkers, administrators, policy advocates, and community organizers in a variety of settings and with diverse populations, including individuals involved in the criminal justice system as well as their families and children; children and families in agency, school and community settings; persons with severe and persistent mental illness, individuals with acute and chronic health problems, including HIV/AIDS; and persons who abuse alcohol and drugs.

3. The College's graduates comprise the majority of new social workers entering the profession in the Chicago area each year, and its graduates are found in social work practice throughout the United States and the world. Consistent with the College's tradition, the doctoral program prepares scholars to focus on research and practice that promotes social and economic justice.

4. I received both my Ph.D. and M.S.S.A. from Case Western Reserve University, and my B.S. (*summa cum laude*) from Bluefield State College. Prior to joining Jane Addams College I served on the faculties of the University of Tennessee, the State University of New York, and West Virginia University, and as Associate Dean at Indiana University. Prior to attending graduate school I was a social worker with the Cuyahoga

County Welfare Department in Cleveland, Ohio. My curriculum vitae is appended as Exhibit 1.

5. My current professional distinctions and associations include membership on the Urban Institute Roundtable on Prisoner Re-entry, the National Advisory Board for the Center for Mental Health Services and Criminal Justice Research, the Illinois Children and Families Research Institute Advisory Committee, and the Chicago Board of Health.

6. I submit this declaration in support of the above-captioned petition to have the Federal Communications Commission ("Commission" or "FCC") address certain issues involving prison inmate calling services referred to the Commission by the United States District Court for the District of Columbia in *Wright, et al. v. Corrections Corporation of America, et al.* ("*Wright*"). I have specific experience and expertise relating to families and the criminal justice system, and in particular to the importance of maintaining and promoting contact between people in prison and their family members, which is relevant to the issues addressed in this proceeding.

7. I have researched and written extensively on the impact of incarceration and reentry on families with children and specifically, on the importance of family communication in securing and successfully completing parole. My articles appear in leading academic journals and textbooks and in publications for practitioners and the general public. Among my recent publications, are:

- o Prisoner Reentry: Social Capital and Family Connections, Women, Girls & Criminal Justice 4/5, 67-68 (2003);
- o Fathers in Prison: Responsible Fatherhood and Responsible Public Policies, Michigan Family Impact Seminars Briefing Report No. 2002-1, 21-26 (2002);

- o The Importance of Families in Prisoners' Community Reentry, ICCA Journal on Community Corrections 11-12(14) (2002);
 - o Prisoners and Families: Parenting Issues During Incarceration, in From Prison to Home: The Effect of Incarceration and reentry on Children, Families and Communities(2002). Washington, DC U.S. Department of Health and Human Services.
 - o The importance of Families in Prisoners' Community Reentry, Family and Corrections Network Report 30 (I), 11-12(2001).
 - o Prisoners and Their Families and Friends, proceedings of the International Conference on Human Rights and Prison Reform (pp. 29-31). Washington, DC: National CURE (2001).
 - o Serving incarcerated and ex-offender fathers and their families: A review of the field. (2001). New York Vera Institute of Justice. (Coauthors: John M. Jeffries and Suzanne Menghraj).
 - o Children with parents in prison: Child welfare policy, program, and practice issues. (2001). Piscataway, NJ: Transaction Publishers. (Co-editor: Cynthia B Seymour).
 - o Justice matters are family matters: Social work and the criminal justice system. (1999, August). NASW New York State Chaoter Update 24, 2.
8. My work in promoting family-oriented correctional policies and institutional and community partnerships to address broad social services and criminal justice goals has been nationally recognized. I have reviewed and documented programs serving families of prisoners, conducted program evaluations of parenting programs in prisons and jails,

and studied the impact of incarceration on families and communities. As a result of my research, writing, evaluations, and consultations, I have an in-depth understanding of the vital role that communication plays in the lives of incarcerated people and their families.

II. PURPOSE OF TESTIMONY

9. The preservation and strengthening of families has a longstanding history as a United States public policy priority and as a major objective of governmental agencies. One way to keep families with incarcerated members remain strong is to keep family members connected throughout the period of incarceration.

10. In this affidavit, I discuss the critical role that ongoing communication and contact plays in the lives of people in prison and their Families. In my experience the issues raised in the *Wright* petition – monopolistic phone service, exorbitant phone rates, and impractical collect-calling arrangements – are both common and problematic. This affidavit discusses 1) how maintaining family contact contributes to family cohesion, 2) hurdles that make contact difficult, and the benefits of contact for people in prison, families, and 3) broader social interests.

III. BENEFITS OF MAINTAINING FAMILY CONTACT BETWEEN PEOPLE IN PRISON AND THEIR INCARCERATED FAMILY MEMBERS

11. Family contact serves to prevent recidivism and delinquency. My review of research on prisoners' family relationships has yielded two consistent findings. First, male prisoners who maintain strong family ties during imprisonment have higher rates of post release success than those who do not. Second, men who assume responsible

husband and parenting roles upon release have higher rates of success than those who do not.

12. There is similar evidence regarding the beneficial value of family ties for females in prison, Dowden and Andrews' (1999) analysis of research on female offenders identified family involvement and affection as the strongest predictors of female offenders' success, and Slaght (1999) found family relationships to have a significant influence on relapse prevention among parolees.

13. Social scientists and practitioners have used these findings to demonstrate that programs including family members in prisoners' treatment during incarceration and after their release can produce positive results for prisoners, families, institutions, and communities (Jeffries, Menghraj, and Hairston, 2001; Wright and Wright, 1992).

14. Communication between people in prison and their children is important not only for people in prison, but for their children as well. Practitioners providing or advocating for parenting programs in prison offer the perspective that incarcerated parents' involvement with, and attachment to, their children can prevent their children from committing crimes.

15. Many studies have demonstrated the importance of family relationships and parenting practices in child development and the prevention of delinquency (Tolan, Guerra, and Kendall, 1995). The maintenance of family ties for incarcerated individuals has been found to produce more positive outcomes for young people who are incarcerated, as well as for adults (Borgman, 1985). Moreover, research indicates that the effects of parental criminality on delinquency are indirect and mediated by parental

attachment (to which communication is essential) and by other factors (Larzelere and Patterson, 1990).

16. ~~Based~~ on my research and experience I conclude that correctional policies that ~~promote~~ the maintenance of familial ~~bonds~~ and responsible parenting serve the interests of people in prison, their families, and society at large.

IV. ONGOING COMMUNICATION AND FAMILY COHESION

17. Communication between prisoners and their families is an essential strategy that families and prisoners use to manage separation and ~~maintain~~ connections. Families visit their imprisoned relatives at the institutions where they are held, ~~talk~~ with them by phone, and exchange cards and letters as a ~~means~~ of staying connected. These contacts allow family members to share family experiences, participate in family rituals, and remain emotionally attached. They help assure incarcerated ~~parents~~ that their children have not forgotten them and help assure children that their parents love and ~~care~~ about them. They allow people in prison to see themselves, ~~arid~~ to ~~function~~, in socially acceptable roles rather than ~~as~~ prison numbers and institutionalized dependents.

18. Families with members in prison engage in a process of role change and adaptability that can be referred to as pitching in and helping out. Some relatives pitch in by taking full or major responsibility for something the prisoner used to do. Some relatives help out with new responsibilities that families acquire ~~as~~ a result of incarceration, e.g. negotiating with the prison system, accepting ~~collect~~ phone calls ~~from~~ the prisoner and then serving ~~as~~ an emissary ~~between~~ the prisoner and his/her children and other relatives, or arranging for and paying the costs of phone bills and prison visits.

19. Prisoners who maintain family connections must adapt to new family roles.

Incarcerated parents are not in a position to make significant financial contributions to their family nor are they able to physically take care of or protect their children. Family role expectations of prisoners, therefore, center on demonstrations of caring and concern for children or other family members or participation in decisionmaking about select family issues.

20. People in prison participate in family life by calling home or calling the place where other family members have gathered on holidays, sending cards to acknowledge birthdays and other events of family relevance, and writing letters to inquire about and encourage children's progress in school and giving advice on how to handle different problems.

V. OBSTACLES TO MAINTAINING FAMILY CONTACT WHILE IN PRISON

21. Telephone calls are an important way for prisoners and their families to maintain contact, because other methods are difficult and sometimes impossible.

22. In many facilities, visiting is difficult (and prohibited for some family members) because of policies requiring children's custodial parents to escort them on visits, or limiting children visitors to those for whom birth certificates list the prisoner as the biological parent. Prison officials may deny visitors entry to the facility for other reasons, including constantly changing dress codes, no identification for children, and ion drug scanners that inaccurately signal that a visitor is carrying drugs. Even when visiting is permitted it may be prohibitively expensive when prisoners are located hundreds or thousands of miles from their homes. Distant prison visits are costly, as they involve

transportation, usually to geographically remote locations; meals and vending machine snacks during visits; and, sometimes, overnight lodging.

23. Many family members are discouraged from visiting by the many indignities the visitation process entails. The visit is often a lesson in humility, intimidation and 'Gustration;and a highly charged and anxiety producing event. Among the problems noted in one state report of prison visiting were long waits, sometimes in facilities without seating, toilets and water; the lack of nutritious food in visiting room vending machines; and the absence of activities for children. Body frisks and intrusive searches, rude treatment by staff, and hot, dirty and crowded visiting rooms are the norm in many prisons. These conditions are particularly difficult for children to endure.

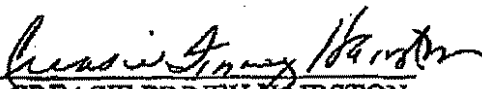
24. Written communication – another possible method of communication – also cannot replace telephone calls. Many people in prison, and many of their family members, are functionally illiterate. People who do write find that prisons often lose their mail, or delay delivering it for weeks at a time. In any event, writing is no substitute for hearing a loved one's voice.

25. For these reasons telephone communication is vital to maintaining family bonds, particularly between parents and children.

26. In theory, the vast majority of correctional facilities permit telephone contact between people in prison and their families. However, the primary intent of the rate structure for prisoner telephone systems seems to be to subsidize prison budgets, generate profits, and/or exert social control, not only over people in prison, but over their kin as well.

27. Relatives caring for the children of prisoners, for example, incur additional financial expenses if they promote the maintenance of parent-child relationships. Allowing children to converse with their incarcerated parents by phone is exceedingly costly. Depending on the prison, a thirty-minute phone call once a week could put a \$125 or higher dent in the family's monthly budget

I declare under penalty of perjury that the foregoing is true and correct


DR. CREASIE FINNEY HAIRSTON
March 8, 2004

Record Detail

Name	Public Correctional Policy on Adult/Juvenile Offender Access to Telephones
Type	Policy
Date	Jan. 24,2001; Feb. 1,2006
Description	<p>Policy Statement: Recognizing that there is no constitutional right for adult/juvenile offenders to have access to telephones, nonetheless consistent with the requirements of Sound correctional management, adult/juvenile offenders should have access to a range of reasonably priced telecommunications services. Correctional agencies should ensure that:</p> <ul style="list-style-type: none"> • A. Contracts Involving telecommunications services For adult/juvenile offenders comply with all applicable state and federal regulations; • B. Contracts are based on rates and surcharges that are commensurate with those Charged to the general public for like Services. Any deviation From ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and • C. Contracts for adult/juvenile offender telecommunications services provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management. <p>~~~~~</p> <p>This Public Correctional Policy was unanimously ratified by the American Correctional Association Delegate Assembly at the Winter Conference in Nashville, Tenn., Jan. 24, 2001. It was reviewed and amended at the Winter Conference in Nashville, Tenn., Feb. 1, 2006.</p>

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